

**STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES**

**CONTRACT FOR DELIVERABLES-BASED INFORMATION TECHNOLOGY
SERVICES**

DELOITTE LLP

1. Introduction

A. Parties

This Contract for services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter “DIR”) with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Deloitte LLP (hereinafter “Vendor”), with its principal place of business at 400 West 15th St. Suite 1700, Austin, Texas 78701.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts’ Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-197, on August 27, 2012, for Deliverables-Based Information Technology Services (DBITS). Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-197 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

This Contract; Appendix A, Deliverables-Based Information Technology Services Contract Terms and Conditions; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Sample Statement of Work; Exhibit 1, Vendor’s Response to RFO DIR-SDD-TMP-197, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-197, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend this Contract, upon mutual agreement, for up to two (2) optional one-year terms. Protracted contract negotiations may, in DIR’s sole discretion, result in fewer optional terms.

3. Service Offerings

Services available under this Contract are limited to the Deliverables-Based Information Technology Services Technology Categories as specified below. Vendor may incorporate changes to their services offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above. Vendor may not add services which were not included in the Vendor's response to the solicitation described in Section 1.B above.

Application Maintenance and Support

- 1) Definition: Application Maintenance and Support includes the skills and requirements for supporting application systems, including troubleshooting, modifying, maintaining and enhancing legacy systems. Application Maintenance and Support also applies to applications running in a production environment.
- 2) Examples of included services: research, analysis, design, programming, testing, documenting and implementing maintenance changes; correcting software errors; modifying reports and ensuring accurate report runs; making modifications to the applications and documentation; writing ad hoc queries; loading and applying changes to the software language and/or database in which the application is written; providing corrections for production or any changes needed and participation in disaster recovery testing, planning and documentation. Services may need to be available 24/7 or on an on-call basis.

Enterprise Resource Planning (ERP)

- 1) Definition: ERP is an amalgamation of an organization's information systems designed to automate and integrate a variety of functions, commonly referred to as "back office", including financials, human resources and asset management. These systems are modularized and generally highly configurable.
- 2) Examples of included services: planning and assessment; requirements development; business process reengineering (BPR); implementation and conversion services; application programming and support services; database administration, system software administration and support; functional support; and training support.

Service Oriented Architecture (SOA)

- 1) Definition: SOA organizes business software in a granular fashion so that common functions can be used interchangeably by different departments internally and by external business partners. The more granular the components (the more pieces), the more they can be reused. SOA is a way of thinking about IT assets as service components. When functions in a large application are made into stand-alone services that can be accessed separately, they are beneficial to several parties. SOAs are

implemented via application programming interfaces (APIs) that allow components to communicate with each other.

- 2) Examples of included services: planning and assessment; requirements development; proof of concept; implementation; deployment; governance; application programming and support services; system software administration and support; and training support.

Project Management

- 1) Definition: Project Management service providers may perform any or all of the project management processes identified by the Project Management Institute as published in Table 3-45 of the PMBOK® Guide, Third Edition or most recent.
- 2) Examples of included services: utilizing the Customer's tools and processes, using off-the-shelf tools or using Vendor's own proprietary tools and processes to manage a project.

Technology Upgrade/Migration and Transformation

- 1) Definition: Technology Upgrade/Migration may be required to increase business functionality, reengineer a business function, keep current with vendor upgrades or when upgrading existing technology. Technology Transformation may be accomplished by converting/migrating legacy applications to new technology either with or without new business functionality or it may include introducing new technology into the enterprise. Technology Upgrade/Migration may also include providing website content accessibility compliance.
- 2) Examples of included services: assessments of the current application portfolio, evaluation of the technology assets before beginning technology transformation and Business Case development for justification of an initiative. Also included are: technology transformations, which may include, appropriate Return on Investment (ROI), benchmarks and milestones. The following activities may also be included: planning, analysis, requirements development, proof of concept, deployment, implementation, integration, remediation, data migration, documentation, application programming and support services; and training support.

Information Technology Assessments and Planning

- 1) Definition: IT Assessments and Planning may include IT effectiveness, maturity, governance, project management and architecture. Strategic planning activities may include mission statement development, visioning and goals, objectives, and strategy development. Tactical planning may require that actionable plans and roadmaps be provided.

- 2) Examples of included services: IT assessments, including enterprise architecture; staff knowledge, skills and abilities (KSAs) assessments; and strategic and tactical planning.

Application Development

- 1) Definition: Application Development means the development of new applications which may be mainframe, server, network-based, web-based or a combination. The requirements for new applications may require interfaces to existing applications.
- 2) Examples of included services: researching; analyzing; gathering requirements; designing; programming; testing; documenting and implementing; applying changes to the software language and/or database in which the application is written; providing corrections for production or any changes needed and participation in disaster recovery planning and documentation.

Independent Verification and Validation (IV&V)

- 1) Definition: Verification and Validation are independent procedures that are used together for in-depth analysis by checking that a product, service, or system meets requirements and specifications and that it fulfills its intended purpose.
- 2) Examples of included services: Validation of software design to meet system needs/requirements; traceability of safety critical requirements; design analysis of selected critical algorithms; and code analysis of mission-critical software components.

4. Pricing

A. Customer Price

Customers purchasing services under this Contract shall negotiate pricing directly with the Vendor in accordance with the Customer's Statement of Work.

B. DIR Administrative Fee

The administrative fee specified in Section 5 below shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

C. Tax-Exempt

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).

D. Travel Expense Reimbursement

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense

reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program (<http://www.window.state.tx.us/procurement/prog/stmp/>). Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 5 below is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

5. DIR Administrative Fee

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is one-half of one percent (0.50%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$500.00.

B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated in the price to the Customer.

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Grace Windbigler
Enterprise Contract Management
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Facsimile: (512) 475-4759

If sent to the Vendor:

Howard "Chip" Blagg
Deloitte LLP
400 West 15th St. Suite 1700
Austin, TX 78701
Phone: (713) 982-2337
Facsimile: (713) 890-4025
Email: cblagg@deloitte.com

7. Statement of Work

Services provided under this Contract shall be based on the Sample Statement of Work as set forth in Appendix C of this Contract. Customers may negotiate the terms and conditions of a SOW to suit their business needs, so long as the SOW terms and conditions do not conflict with this Contract.

8. Customer Satisfaction Metrics

DIR reserves the right to engage a third party to build and gauge customer satisfaction metrics. Should a Vendor go two straight quarters with a low customer satisfaction score, DIR reserves the right to suspend all new prospective business orders for up to two business quarters until customer satisfaction issues are resolved

9. Intellectual Property Matters**A. Definitions**

1. "Work Product" means any and all deliverables produced by Vendor for Customer under a Statement of Work issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to Customer under the Contract or a Statement of Work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of Customer in connection with this Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer's benefit: (a) by any Vendor personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

2. "Intellectual Property Rights" means the worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method,

process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

3. "Statement of Work" means a document signed by Customer and Vendor describing a specific set of activities and/or deliverables, which may include Work Product and Intellectual Property Rights, that Vendor is to provide Customer, issued pursuant to the Contract.

4. "Third Party IP" means the Intellectual Property Rights of any third party not a party to this Contract, and which is not directly or indirectly providing any goods or services to Customer under this Contract.

5. "Vendor IP" shall mean all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Vendor (a) prior to providing any Services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of Customer relating to the Services or Work Product, or (b) after the Effective Date of the Contract if such tangible or intangible items or things were independently developed by Vendor outside Vendor's provision of Services or Work Product for Customer hereunder and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

B. Ownership.

As between Vendor and Customer, the Work Product and Intellectual Property Rights therein are and shall be owned exclusively by Customer, and not Vendor. Vendor specifically agrees that the Work Product shall be considered "works made for hire" and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Vendor hereby agrees that the Contract effectively transfers, grants, conveys, assigns, and relinquishes exclusively to Customer all right, title and interest in and to all ownership rights in the Work Product, and all Intellectual Property Rights in the Work Product, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Vendor acknowledges that Vendor and Customer do not intend Vendor to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8AM to 5PM) and upon reasonable prior notice to Vendor, to all Vendor materials, premises and computer files containing the Work Product. Vendor and Customer, as

appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted hereunder to any Third Party IP, except as may be incorporated in the Work Product by Vendor.

C. Further Actions.

Vendor, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Vendor's signature due to the dissolution of Vendor or Vendor's unreasonable failure to respond to Customer's repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Vendor hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Vendor's agent and Vendor's attorney-in-fact to act for and in Vendor's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Vendor, provided however that no such grant of right to Customer is applicable if Vendor fails to execute any document due to a good faith dispute by Vendor with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Vendor shall cooperate, at Customer's sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

D. Waiver of Moral Rights.

Vendor hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Vendor may now have or which may accrue to Vendor's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Vendor acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

E. Confidentiality.

All documents, information and materials forwarded to Vendor by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, and subject to the license granted by Customer to Vendor under sub-paragraph H. Notwithstanding the foregoing, (i) Customer information shall not be deemed confidential to the extent that Vendor is required to disclose such information as may be required by any law, rule, regulation, judicial or administrative process, and (ii) Vendor

Vendor Contract No. _____

may disclose such information (1) to subcontractors that are providing services in connection with an SOW and that have agreed to be bound by the confidentiality obligations of this Section; or (2) to the extent such information (i) shall have otherwise become publicly available (including, without limitation, any information filed with any governmental agency and available to the public) other than as the result of a disclosure in breach hereof, (ii) becomes available to Vendor on a non-confidential basis from a source other than DIR or Customer that Vendor believes is not prohibited from disclosing such information to Vendor by obligation to DIR or Customer, (iii) is known by Vendor prior to its receipt from DIR or Customer without any obligation of confidentiality with respect thereto, or (iv) is developed by Vendor independently of any disclosures made by DIR or Customer to Vendor of such information. Hereunder, Vendor shall not use, disclose, or permit any person to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer, provided that Customer shall use, disclose or obtain any Vendor IP (as defined below) that may be contained in such Work Product.

F. Injunctive Relief.

The Contract is intended to protect Customer's proprietary rights pertaining to the Work Product, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Vendor acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin any material breach of the intellectual property, use, and confidentiality provisions of this Contract, upon a request by Customer, without requiring proof of irreparable injury as same should be presumed.

G. Return of Materials Pertaining to Work Product.

Upon the request of Customer, but in any event upon termination or expiration of this Contract or a Statement of Work, Vendor shall surrender to Customer all documents and things pertaining to the Work Product, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by Vendor in each case for delivery as Work Product to Customer or furnished by Customer to Vendor, including all materials embodying the Work Product, any Customer confidential information, or Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete, in each case in Vendor's possession; provided that any work-in-progress shall be provided on an as-is basis, without warranty. This section is intended to apply to all Work Product as well as to all documents and things furnished to Vendor by Customer or by anyone else, on Customer's behalf, that pertains to the Work Product. Notwithstanding anything herein to the contrary, Vendor shall have the right to retain copies of such material, data and information and any summaries, analyses, notes, or extracts prepared by Vendor which are based on or contain portions of such material, data or information to the extent necessary to evidence the Services, provided that Vendor retains such copies in accordance with its confidentiality obligations hereunder. IN NO EVENT WILL VENDOR RETAIN ORIGINAL CUSTOMER INFORMATION IN ANY FORM.

H. Vendor License to Use.

Customer hereby grants to Vendor a non-transferable, non-exclusive, royalty-free, fully paid-up license to use any Work Product solely as necessary to provide the Services to Customer. Except as provided in this Section, neither Vendor nor any Subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.

I. Third-Party Underlying and Derivative Works.

To the extent that any Vendor IP or Third Party IP are embodied or reflected in the Work Product, or are necessary to provide the Services, Vendor hereby grants to the Customer, or shall obtain from the applicable third party for Customer's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for Customer's internal business purposes only, to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Vendor IP or Third Party IP and any derivative works thereof embodied in or delivered to Customer in conjunction with the Work Product, and (ii) authorize others to do any or all of the foregoing. Vendor agrees to notify Customer on delivery of the Work Product or Services if such materials include any Third Party IP. On request, Vendor shall provide Customer with documentation indicating a third party's written approval for Vendor to use any Third Party IP that may be embodied or reflected in the Work Product.

J. Agreement with Subcontracts:

Vendor agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing Services or Work Product pursuant to the Contract, prior to their providing such Services or Work Product, and that it shall maintain such written agreements at all times during performance of this Contract, which are sufficient to support all performance and grants of rights by Vendor. Copies of such agreements shall be provided to the Customer promptly upon request.

K. License to Customer.

Vendor grants to Customer, a perpetual, irrevocable, royalty free license, solely for the Customer's internal business purposes, to use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Vendor IP embodied in or delivered to Customer in conjunction with the Work Product. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carryout Customer's internal business use of the Work Product. Except for the preceding license, all rights in Vendor IP remain in Vendor.

L. Vendor Development Rights.

To the extent not inconsistent with Customer's rights in the Work Product or as set forth herein, nothing in this Contract shall preclude Vendor from developing for itself, or for others, materials which are competitive with those produced as a result of the Services provided hereunder, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the

extent that Vendor wishes to use the Work Product, or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Vendor and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.

10. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Deliverables Based Information Technology Services (DBITS) Contracts.

A. Section 5, Contract Fulfillment and Promotion, C. Services Warranty and Return Policies, is hereby replaced in its entirety:

Vendor warrants that the Services shall be performed by competent personnel in a workmanlike manner, and shall be of professional quality consistent with generally accepted industry standards for the performance of the Services. VENDOR DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

B. Section 5, Contract Fulfillment and Promotion, H. DIR Cost Avoidance, is hereby replaced in its entirety:

DIR reserves the right to work with Vendor to develop and implement a method to track cost avoidance the State has achieved through the Contract. Vendor shall fully cooperate with DIR to implement a mutually agreed upon cost avoidance methodology for the Contract.

C. Section 8, Vendor Responsibilities, A. Indemnification, 2) Acts and Omissions, is hereby replaced in its entirety:

Vendor shall defend, indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS AND REPRESENTATIVES, FROM ANY AND ALL THIRD PARTY LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS OF DEFENSE, INCLUDING ATTORNEY FEES, AND EXPENSES, arising out of, or resulting from wrongful acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. REGARDLESS OF THE NEGLIGENCE OF THE CUSTOMER, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES SHALL NOT VOID THIS INDEMNIFICATION OBLIGATION HOWEVER, VENDOR'S SHARE OF FINAL RESPONSIBILITY FOR COSTS, FEES, EXPENSES, AND DAMAGES SHALL BE LIMITED TO ITS PROPORTION OF LIABILITY FOR THE CLAIM. VENDOR SHALL PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE

ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

D. **Section 8, Vendor Responsibilities, A. Indemnification, 3) Infringement**, is hereby replaced in its entirety:

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS AND REPRESENTATIVES (FOR PURPOSES OF THIS PROVISION, "STATE") from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS. No such indemnification shall apply to claims arising solely from the State's misuse or modification of Vendor's services or deliverables; the State's failure to use correction or enhancements made available by Vendor; the State's use of such services or deliverables in combination with any product, materials or information not provided by Vendor; or information, material or specifications provided by or on behalf of the State.

b) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

E. **Section 8, Vendor Responsibilities, F. Use of Subcontractors**, is hereby replaced in its entirety:

DIR and Customer each hereby consents to Vendor subcontracting any of Vendor's rights or obligations hereunder to any affiliate or related entity. If Vendor uses any subcontractors in the performance of this Contract, Vendor must make a good faith effort in the submission of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses. A revised Subcontracting Plan shall be required before Vendor can engage additional subcontractors in the performance of this Contract. Vendor shall remain solely responsible for the performance of its obligations under the Contract.

F. **Section 8, Vendor Responsibilities, H. Confidentiality**, is hereby replaced in its entirety:

- 1) Vendor acknowledges that DIR and Customers that are state agencies are government agencies subject to the Texas Public Information Act. Vendor also acknowledges that DIR and Customers that are state agencies will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act. Except as provided for in the immediately preceding sentence, or as otherwise agreed to in a SOW, each of DIR and Customer agrees that all Services and Deliverables are not intended to be, and should not be, relied upon by any person or entity other than Customer.
- 2) Under the terms of the Contract, DIR may provide Vendor with information related to Customers. Vendor shall not re-sell or otherwise distribute or release Customer information to any party in any manner.

G. **Section 8, Vendor Responsibilities, K. Limitation of Liability**, is hereby replaced in its entirety:

For any claim or cause of action arising under or related to the Contract: i) none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the total amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Vendor's liability shall not apply to claims of patent, trademark, or copyright infringement. Limitation of liability applies irrespective of the form of action, including contract and tort claims.

H. **Section 8, Vendor Responsibilities, O. Required Insurance Coverage**, is hereby replaced in its entirety:

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that are A financially rated and duly licensed, admitted, and authorized to do business in the State of Texas. The Customer and DIR will be named as Additional Insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each

Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

1) Commercial General Liability

Commercial General Liability must include minimum limit of \$500,000 per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate of \$500,000. The policy shall contain the following provisions:

- a) Contractual liability coverage for liability assumed under the Contract;
- b) State of Texas, DIR and Customer listed as an additional insured;
- c) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

2) Workers' Compensation Insurance

Workers' Compensation Insurance and Employers' Liability coverage must include limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat) and minimum policy limits for Employers' Liability of \$250,000 bodily injury per accident, \$500,000 bodily injury disease policy limit and \$250,000 per disease per employee.

3) Business Automobile Liability Insurance

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternative acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation;
- b) Additional Insured.

The Vendor shall provide thirty (30) days prior written notice to the Customer and/or DIR in the event of cancellation, adverse material alteration or non-renewal.

- I. **Section 8, Vendor Responsibilities, W. No Solicitation of State Employees**, is hereby replaced in its entirety:

Vendor shall not solicit, directly, any employee of DIR who is associated with this Contract for a period of 90 calendar days following completion of the Contract. Further, Vendor shall not solicit for a period of 90 days following completion of the SOW, directly, any employee of a DIR Customer who has participated in any projects on which the Vendor's Workers have been assigned. This shall not include those employees of DIR who respond to general advertisements for employment.

J. Section 8, Vendor Responsibilities, X. State Ownership of Work Product, is hereby replaced in its entirety:

Vendor and Customer acknowledge and agree that, upon full payment for each such Work Product (as defined below), any and all analyses, evaluations, reports, memoranda, letters, ideas, processes, methods, programs, and manuals that were developed, prepared, conceived, or made by the Vendor for any DIR Customer pursuant to a SOW, including all such developments as are originated or conceived during the term of this Contract but are completed or reduced to writing thereafter, and in each case identified in the applicable SOW as a deliverable or specific work product required to be delivered (the "Work Product"), will be and remain the exclusive property of DIR's Customer. For those DIR Customers without statutory authority to own such work product, DIR shall do so on their behalf. Other than Vendor IP (as defined below), all rights, title and ownership interests, including copyright, which Vendor and all Workers may have in any Work Product or any tangible media embodying such Work Product are hereby assigned to DIR's Customer or, in those cases where the Customer does not have the authority, to DIR. Vendor, for itself and on behalf of its Workers, waives any property interest in such work product. DIR agrees that any Customer may elect, in an applicable SOW, to provide license rights back to Vendor with respect to Work Product.

Notwithstanding any provisions to the contrary in Section 8(A)(5) of the DBITS Contract, the parties hereby agree that Vendor has created, acquired, or otherwise has rights in, and may, in connection with the performance of the Services, employ, provide, modify, create, acquire, or otherwise obtain rights in, pre-existing or independently developed works of authorship, materials, information, and other intellectual property (collectively, the "Vendor IP"). Notwithstanding any provisions to the contrary in Sections 8(B) and 8(K) of the DBITS Contract, to the extent that any Vendor IP is contained in any of the Work Product, Vendor hereby grants Customer, upon full and final payment to Vendor hereunder, a royalty-free, fully paid-up, worldwide, nonexclusive license to use such Vendor IP solely in connection with the Work Product. Notwithstanding any provisions to the contrary in Sections 8(A)(1) or 8(B) of the DBITS Contract, such Vendor IP shall remain the property of Vendor and, except for the license granted in the preceding sentence, neither DIR nor the Customer shall acquire any right or interest in such Vendor IP. Notwithstanding any provisions to the contrary in Section 8(A)(1) of the DBITS Contract, the parties hereby agree that the term "Work Product" shall not include Vendor IP that may be contained in such Work Product.

Vendor does not agree to any terms that may be construed as precluding or limiting in any way its right to (1) provide consulting or other services of any kind or nature whatsoever to any person or entity as Vendor in its sole discretion deems appropriate or (2) develop for itself, or for others, materials that are competitive with or similar to those produced as a result of the Services, irrespective of their similarity to the Work Product.

K. Section 8, Vendor Responsibilities, Y. Warranty, is hereby replaced in its entirety:

Customer shall approve each deliverable that conforms in all material respects to the relevant requirements of the applicable SOW. Customer shall not unreasonably withhold such approval. Unless otherwise agreed to in an SOW, the Customer has 30 days from the date that Vendor delivers any Work Product to inform Vendor of its determination that the Vendor has made errors in completed deliverable. Customer will immediately (but no later than five (5) business days from Vendor's delivery of the deliverable to Customer) inform the Vendor of the Customer's determination and provide Vendor with a written statement, in reasonable detail, with references to the applicable specifications, all of the deficiencies preventing approval. The Vendor shall make such corrections and revisions as are necessary so that the deliverables complained of are in compliance in all material respects to the applicable specifications. Correction is limited to rework of the unsatisfactory work without change to the original specifications and without regard to the amount of the effort expended on the original deliverable.

Upon receipt of such corrected and resubmitted deliverable, the Customer shall have five business days to test the corrected deliverable to confirm that the required corrections have been made by the Vendor. If the identified deficiencies have been corrected, the deliverable shall be accepted.

To the extent that any deliverables are approved by the Customer pursuant to the terms hereof, the Vendor shall be entitled to rely on such approval. In the event of any conflict between an accepted deliverable and the Contract, the accepted deliverable shall govern.

L. Section 9, Contract Enforcement, B. Termination, 3) Termination for Convenience, is hereby replaced in its entirety:

DIR or Vendor may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate a Purchase Order for convenience or cause if it is determined by the Customer that Vendor will not be able to deliver services in a timely manner to meet the business needs of the Customer. If Customer terminates for cause then the provision of Section 13, B.4 shall apply.

M. Section 9, Contract Enforcement, B. Termination, 4) Termination for Cause, is hereby replaced in its entirety:

a) Contract

Either DIR or Vendor may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of the Contract. The notice shall specify the nature of the default. The non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of said notice to cure said default (or provide an acceptable plan for correction). If the defaulting party

fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Contract. Beyond this point, contract disputes will be addressed in accordance with Chapter 2260, Texas Government Code. Customers purchasing services under the Contract have no power to terminate the Contract for default.

b) Purchase Order

Customer or Vendor may terminate a Purchase Order upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order in accordance with Section 3.B.2 above, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of written notice specifying the nature of the breach to cure said default (or provide an acceptable plan for correction). If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order. Beyond this point, contract disputes will be addressed in accordance with Chapter 2260, Texas Government Code.

N. Section 9, Contract Enforcement, Force Majeure, is hereby replaced in its entirety:

DIR, Customer, or Vendor may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, or other causes beyond its control, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order for its convenience if it is determined by the Customer that Vendor will not be able to deliver services in a timely manner to meet the business needs of the Customer due to a Force Majeure event.

O. Section 12, Mutual Cooperation, is hereby added:

Each party shall reasonably cooperate with the other party in the performance of the Contract, including provision by Customers of timely access to data, information, and its personnel. Customers shall be responsible for the performance of their personnel and agents and for the accuracy and completeness of data and information provided to the Vendor. The Vendor's performance is dependent upon the timely and effective satisfaction of Customer's responsibilities under Purchase Orders and timely decisions and approvals of each such Customer in connection with the services. Vendor shall be entitled to rely on all decisions and approvals of the Customer.

This Contract is executed to be effective as of the date of last signature.

Deloitte LLP

Authorized By: signature on file

Name: George A. Scott

Title: Partner

Date: 6/25/13

The State of Texas, acting by and through the Department of Information Resources

Authorized By: signature on file

Name: Carl Marsh

Title: Chief Operating Officer

Date: 6/25/13

Office of General Counsel: signature on file 6/25/13